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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,606	11/12/2003	Richard J. Morris	1915.34US02	5857
24113	7590	05/18/2004	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.			VARNER, STEVE M	
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MINNEAPOLIS, MN 55402-2100			3635	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/706,606	<b>Applicant(s)</b> MORRIS ET AL.	
	<b>Examiner</b> Steve M Varner	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-17,19,20 and 22-39 is/are rejected.
- 7) ☒ Claim(s) 2,18 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Objections*

There are two claim 25's.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-17, 19, 20, 22-39, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 16-18, of U.S. Patent No. 6357193, Morris in view of Charniga.

Regarding claim 1, Morris '193 claim 1, 5, claims first and second envelope layers, the first and second envelope layers being spaced apart by a plurality of furring strips, each furring strip of the plurality of furring strips including at least one layer comprising a generally planar first ply and a second ply, the first and second plies cooperating to define a multiplicity of passages extending generally transversely to a longitudinal axis of the furring strip.

Morris '193 claim 1, 5, does not claim a structural frame presenting an exterior and interior side, the plurality of furring strips arranged so as to define a plurality of enclosed cavities between the first and second envelope layers, each cavity being fluidly coupled to at least one adjacent cavity through the passages in one of the plurality of furring strips. Charniga shows structural frame (11, 12) presenting an exterior and interior side, the plurality of furring strips (12) arranged so as to define a plurality of enclosed cavities (between 12) between the first (20) and second (17) envelope layers, each cavity being fluidly coupled to at least one adjacent cavity through the passages (16) in one of the plurality of furring strips (Fig. 1, 3). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify Morris '193's furring strips into the structure of Charniga to prevent moisture buildup through air circulation.

Regarding claim 3, 4, Morris '193 claim 1, 5, claims the basic claimed structure. Morris '193 claims 3, 4, do not claim at least one of the first and second envelope layers comprises sheathing and at least one of the first and second envelope layers comprises finish siding. Charniga shows sheathing (20) and finish siding (19). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use sheathing and siding as in Charniga in the structure of Morris '193 to form the interior and exterior barriers to create a dead airspace for insulation.

Regarding claim 5, Morris '193 claim 3 claims the second ply of each furring strip of the plurality of furring strips is generally convoluted.

Regarding claim 6, Morris' 193 claim 4 claims each furring strip of the plurality of furring strips has at least a pair of first plies.

Regarding claim 7, Morris '193 claim 2 claims the second ply of each furring strip of the plurality of furring strips includes a multiplicity of cross-ply extending between the first plies.

Regarding claim 8, Morris claim '193 claim 5 claims each furring strip of the plurality of furring strips has a plurality of layers.

Regarding claim 9, Morris claim '193 claim 6 claims adjacent layers of the plurality of layers are hingeably connected at a hinge line extending generally parallel to the longitudinal axis of the furring strip.

Regarding claim 10, Morris claim '193 claim 7 claims the hinge line of the furring strip is defined by a slice extending through the second ply and one of the first plies of the furring strip.

Regarding claim 11, Morris '193 claim 8 claims the furring strip has first and second hinge lines, the first hinge line defined by a first slice extending through one of the first plies and the second ply, and the second hinge line defined by a second slice extending through the other of the first plies and the second ply.

Regarding claim 12, Morris '193 claim 9 claims the hinge line of the furring strip is defined by alternate severed and intact portions, the severed portions comprising substantially severed first and second plies, the intact portions comprising substantially intact first and second plies.

Regarding claim 13, Morris '193 claim 10 claims the layers of the furring strip are stacked and fastened together.

Regarding claim 14, Morris '193 claim 11 claims the furring strip further comprises means for fastening the layers together.

Regarding claim 15, Morris '193 claim 12 claims the layers of the furring strip are fastened together by stitching.

Regarding claim 16, Morris '193 claim 13 claims the layers of the furring strip are fastened together by fasteners selected from the group consisting of staples, glue, hot air welding, stitching, ultrasonic welding, infrared bonding, and any combination thereof.

Regarding method claim 17, Morris '193 claim 14 claims the steps of forming a plurality of elongate furring strips, each furring strip having a pair of opposing sides and comprising at least one layer of a material having first and second plies defining a multiplicity of air passages therethrough, the air passages extending generally transversely to the sides of the furring strip,

Morris '193 claim 14 does not claim operably disposing a first envelope layer on a structural frame defining the structure, affixing the plurality of furring strips on the first envelope layer so that the furring strips and the first envelope layer define a plurality of recesses, and enclosing the recesses with a second envelope layer disposed over the plurality of furring strips, each enclosed recess being fluidly coupled to at least one adjacent recess through the air passages of at least one of the plurality of furring strips. Charniga shows a first envelope layer (20) on a structural frame (12) defining the structure, a plurality of recess (between 12), a first envelope (20) and a second

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envelope (17) over the furring strips (12), the recesses being fluidly coupled (Fig. 1, 3).

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify Morris '193 into the structure of Charniga to keep out moisture through air circulation.

Regarding claim 19, Morris '193 claim 1 claims, first and second envelope layers the first and second envelope layers being spaced apart by a plurality of elongate furring strips, each furring strip having a pair of opposing sides,

Morris '193 claim 1 does not claim the furring strips spaced apart so as to define a plurality of separate cavities between the first and second envelope layers, each furring strip having means for fluidly coupling cavities adjacent each of the opposing sides of the furring strip. Charniga shows the furring strips spaced apart so as to define a plurality of separate cavities (between 12) between the first (20) and second (17) envelope layers, each furring strip having means (16) for fluidly coupling cavities adjacent each of the opposing sides of the furring strip (12) (Fig. 1, 3). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify Morris '193 into the structure of Charniga to keep out moisture by air circulation.

Regarding claim 20, Morris '193 claim 1 claims the means for fluidly coupling cavities adjacent each of the opposite sides of the furring strip comprises a multiplicity of air passages extending between the opposing sides of the furring strip.

Regarding claim 22, Morris '193 claim 1 claims the air passages extend generally transversely to a longitudinal axis of the furring strip.

Regarding claim 23, Morris '193 claim 1 claims each furring strip includes at least one layer comprising a generally planar first ply and a second ply, the first and second plies cooperating to define the multiplicity of air passages,

Regarding claim 24, Morris '193 claim 3 claims the second ply is generally convoluted,

Regarding claim 25, Morris '193 claim 4 claims the furring strip has at least a pair of first plies.

Regarding claim 25, Morris '193 claim 2 claims the second ply includes a multiplicity of cross-ply extending between the first plies.

Regarding claim 26, Morris '193 claim 5 claims furring strip has a plurality of layers.

Regarding claim 27, Morris '193 claim 6 claims the plurality of layers are hingably connected at a hinge line extending generally parallel to the longitudinal axis of the furring strip.

Regarding claim 28, Morris '193 claim 7 claims the hinge line of the furring strip is defined by a slice extending through the second ply and one of the first plies of the furring strip.

Regarding claim 29, Morris '193 claim 8 claims the furring strip has first and second hinge lines, the first hinge line defined by it first slice extending through one of the first plies and the second ply, and the second hinge line defined by a second slice extending though the other of the first plies and the second ply.



Regarding claim 30, Morris '193 claim 9 claims the hinge line of the furring strip is defined by alternate severed and intact portions, the severed portions comprising substantially severed first and second plies, the intact portions comprising substantially intact first and second plies.

Regarding claim 31, Morris '193 claim 10 claims layers of the furring strip are stacked and fastened together.

Regarding claim 32, Morris '193 claim 11 claims wherein the furring strip further comprises means for fastening the layers together

Regarding claim 33, Morris '193 claim 12 claims the layers of the furring strip are fastened together by stitching.

Regarding claim 34, Morris '193 claim 13 claims the layers of the furring strip are fastened together by fasteners selected from the group consisting of staples, glue, hot air welding, stitching, ultrasonic welding, infrared bonding, and any combination thereof.

Regarding method claim 35, Morris '193 claim 14 claims forming at least one elongate furring strip, the furring strip having a pair of opposing sides and comprising at least one layer of a material having first and second plies defining a multiplicity of air passages there through, the air passages extending generally transversely to the sides of the furring strip.

Morris '193 claim 14 does not claim disposing the furring strip in the interstitial space. It would have been an obvious design choice to put the furring strip where it was needed.

Regarding claim 36, Morris '193 claim 5 claims forming the material with at least a pair of first plies.

Regarding claim 37, Morris '193 claim 2 claims the step of forming the furring strip includes forming the material with the second ply including a multiplicity of cross-plyies extending between the first plies.

Regarding claim 38, Morris '193 claim 16 claims the step of forming the furring strip includes forming the material with a plurality of layers.

Regarding claim 39, Morris '193 claim 17, 18, claim the step of forming the furring strip includes stacking and fastening together the layers.

#### ***Claim Objections***

Claims 2, 18, 21, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morris '668 shows bridge cap vent. McFarland shows a corrugated paperboard corner. Erb shows a header for a solar energy collection system.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SV



Carl D. Friedman  
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